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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 04/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/084,690

Applicant(s)

VILLA, JORGE ENRIQUE

Examiner

Chapman E Jeanette

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, drawn to a catastrophic event survival structure, classified in class 52, subclass 79.1.
- II. Claims 17-20, drawn to a method of manufacturing, classified in class 52, subclass 741.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the structure could be constructed by a different process not requiring a mold. Further, the process of making could be used to make another type of building structure whose use is not for catastrophic survival. .

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr H John Rizvi on 3/11/03 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-16. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 17-20 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Further, the claims containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. *The disclosure and claims recite a monolithic outer shell. However, figure 5 and the disclosure also disclose that the same is not monolithic. See the many pieces/elements of the outer shell and the corresponding disclosure.*

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trice (3251159 in view of Robinson (5326328). Trice shows a catastrophic event survival structure comprising:

- a monolithic outer shell, as much as that of applicant's is the same; the shell is formed from single pour of concrete. See column 2 , beginning with line 25. The structure encloses a confined inner space. The structure of Trice is capable of withstanding substantial wind and projectile impact forces.;
- at least one door 36 formed in the shell and configured to provide re-sealable access to the confined inner space;
- Trice shows the handle means 37 employed to carry the structure, And such means which are capable of being employed as handles; a plurality of rods embedded in the outer shell.

Trice lacks the spherical polyhedron shape and the reinforced rebars as shown by Mitchell. The shape has been considered one of choice; one of ordinary skill in the art would have appreciated all configurations capable of fulfilling the intended purpose and function of the structure and would have selected any one accordingly. Nevertheless, Mitchell discloses the shape having a horizontal top/bottom panels and a plurality of generally vertical side walls 210/310 between the top and bottom panels. Mitchell also discloses a plurality of generally inclined upper/lower panels. The structure of Mitchell is formed without joints and with substantially gradual angles, no angle being greater than

90 degrees. Further, it would have been obvious to one of ordinary skill in the art to construct the structure of the shape of Mitchell and to include his pipes or rebars in order to provide an improved strength structure difficult circumstances.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trice (3251159) in view of Mitchell as applied to claim 1 and further in view of Robinson (5326328). Trice and Mitchell lacks the elevating means having the plurality of legs. Robinson shows this structure on his monolithic spherical polyhedron. It would have been obvious to include the elevating means on the portable structure to Trice in order to provide clearance from the environment to further facilitate its portability

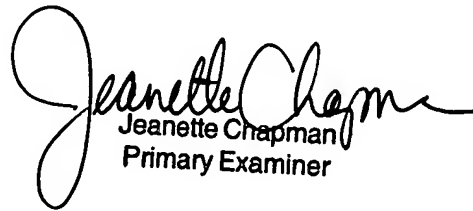
Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trice (3251159) in view of Mitchell as applied to claim 1 and further in view of McCarthy (6385919). Trice lacks the ventilation means comprising at least one air conduit as shown by McCarthy. See column 5, lines 21-65 and column 8, lines 1-40. McCarthy also shows the electrical supply means to provide a ready supply of power. This electrical supply means comprises a battery 32. McCarthy also discloses comprises a wire and an outlet system configured to receive power from an external source. See column 10, lines 33-40. It would have been obvious to include this structure on the shelter to Trice in order to make a self-sufficient structure in the instance one has to remain in the shelter longer than expected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 305-7687 for regular communications and 305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

jec  
March 24, 2003

  
Jeanette Chapman  
Primary Examiner